American Edge Project:

From AI to M&A: How Acquisitions Underpin America's Tech Leadership

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AMERICAN EDGE PROJECT

American Edge Project Issue Brief

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EXECUTIVE SUMMARY

The issue brief highlights the critical role of mergers and acquisitions (M&A) in sustaining U.S. global technological leadership, particularly in artificial intelligence (AI) and other emerging technologies. At a time when China's model of state industrial policy is closing the gap, and when Europe's economy is stagnating, M&A is the secret sauce that fuels American innovation.

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Key Facts

- **M&A fuels America's innovation ecosystem** by giving startups and small companies the critical financing and infrastructure to scale revolutionary technologies.
- **M&A raises research and development (R&D) and patents across industries**, driving billions in new research spending and thousands of additional patent applications.
- **Startups depend on M&A for growth and exits**, which incentivizes ambitious ventures and ensures groundbreaking ideas receive funding.
- **M&A strengthens high-risk, capital-intensive industries**, such as AI and biotech, by enabling larger firms to absorb risks and costs, bringing new technologies to market faster.
- **M&A enhances U.S. global competitiveness and security**, with nearly 19,000 completed transactions worth close to $350 billion in 2021 alone, giving U.S. firms the scale to counter heavily subsidized Chinese rivals.

Policy Recommendations

- **Restore innovation as a core priority** in U.S. merger policy by revising the merger guidelines and returning to measured enforcement grounded in evidence, precedent, and a respect for the importance of American innovation.
- **Integrate national security concerns** into merger review by having the intelligence and national security agencies assess the global competitive landscape, particularly in light of China's ambitions.
- **Encourage Europe to embrace the benefits of mergers**, pushing back against overly restrictive European Union (EU) rules and ensuring that U.S. firms aren't disadvantaged abroad.

- **Build on the AI Action Plan**, extending its principle that antitrust enforcement must not unduly burden innovation to the Department of Justice (DOJ) and across all critical sectors, from biotech to quantum computing.

A dynamic M&A environment is essential for maintaining America's technological edge, countering China's aggressive industrial policies, and ensuring long-term economic and national security. By prioritizing innovation and measured enforcement, the United States can continue to lead in global technological advancements.

Overview

M&A fuels America's innovation ecosystem and our ability to lead the world in AI and other emerging technologies. M&A provides startups and small companies with the financing, infrastructure, and distribution networks necessary to develop and scale revolutionary technologies. Across industries, from AI and biotech to defense and semiconductors, strategic M&A has increased patent filings, raised investment levels, and helped the United States build its technological edge.

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As China moves to dominate critical tech sectors via aggressive state industrial policy, the United States must realign its merger policy to prioritize innovation. Over the past several years, the federal government has often discouraged capital flows by raising the cost of merger filings, embracing quixotic anti-acquisition legal theories, challenging deals that had been cleared and consummated many years prior, and even colluding with foreign competition agencies.

At the same time, the EU, its member states, and the United Kingdom (UK) needlessly delayed and even blocked numerous mergers involving American companies in critical health care and technology markets, again based on speculative theories. As a result, U.S. firms have had to abandon pro-competitive mergers, slowing innovation on both sides of the Atlantic and allowing Chinese competitors to gain market share.

With President Donald Trump's return to office and resolve to usher in a new golden age of American innovation, the federal government should set a clear mandate: merger policy must support, rather than undermine, U.S. innovation. To that end, the government should do the following:

- **Restore Innovation as a Core Priority in Merger Policy**
  The antitrust agencies should revise the merger guidelines and filing forms to expedite review of pro-competitive mergers, return to measured enforcement grounded in evidence and precedent, and expressly evaluate how proposed mergers may strengthen U.S. innovation, competitiveness, and technological leadership in the global economy.

- **Incorporate National Security Concerns into Merger Review**
  For mergers that could affect national security, the intelligence and national security agencies should assess the global competitive landscape, particularly in light of China's

ambitions, and opine as to whether the merger would affect the economy's capacity to innovate and defend our national security.

- **Encourage Europe to Embrace the Pro-Competitive Benefits of Mergers**
  After decades of hostility, European policymakers are beginning to recognize that mergers promote investment, innovation, growth, and competitiveness, even as EU institutional inertia still leans toward disproportionately regulating American firms. The United States should learn from Europe's past mistakes, reject efforts to import European competition concepts here at home, and encourage Europe to adopt a fresh approach to merger review.

- **Build on the AI Action Plan**
  In its AI Action Plan, the White House wisely instructed the Federal Trade Commission (FTC) to ensure that enforcement activities "do not advance theories of liability that unduly burden AI innovation." The White House should extend this directive to the DOJ and all forms of innovation, from biotech to quantum computing.

Through these steps, the White House can realign merger policy to prioritize innovation and preserve America's technological edge.

Pillar One: The United States Needs Robust M&A to Maintain its Global Technological Edge

In the current race for global technological supremacy, the contestants are not only China and the United States, but also two distinct ways of organizing an economy. In China, the state is spending more than a trillion dollars on research into advanced technologies, subsidizing infrastructure, and stealing hundreds of billions in intellectual property. America's free market economy, on the other hand, depends on the free flow of private capital to startups and small companies, via venture capital and M&A, to develop new technologies. To maintain its edge, America must allow M&A to fuel its innovation ecosystem.

China's State Industrial Policy Is Challenging American Technological Supremacy

China uses state investment, coercion, and theft to advance its technological capabilities. To achieve its goal of becoming the world's dominant AI power, China is investing $2.8 trillion in a slew of technologies, including AI, advanced microchips, and quantum computing. China's government is subsidizing access to computing power and compiling data to train AI systems, while China's military is building new laboratories and reorganizing its science and technology branches. China supports its efforts by annually stealing $500 billion in intellectual property from the U.S. alone.

Beyond this direct involvement, China's government is pressuring other actors to invest in new technologies. The government has pushed its largest companies to invest in AI startups; since 2023, 40 percent of Alibaba's deals in China and 30 percent of Tencent's have targeted AI startups. According to the National Bureau of Economic Research (NBER), between 2000 and 2023, Chinese government venture capital funds invested $184 billion in 9,623 unique AI firms.

While perhaps not sustainable over the long haul, in the short term at least, China's industrial policy model directly challenges U.S. global technological leadership. According to a study, China now leads the United States in 57 of 64 critical technologies, including quantum censors, high-performance computing, and AI algorithms. In 2022, China tripled the United States in terms of global AI patent origins – 61.1 percent to 20.9 percent. The National Security Commission on Artificial Intelligence (NSCAI) found that China is poised to supplant the

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United States in AI by 2030, and President Trump himself called DeepSeek a "wake-up call" for America's tech companies.

American Innovation Relies Upon M&A

Faced with this challenge, the United States must allow its innovation ecosystem to fire on all cylinders. The lifeblood of this ecosystem is access to private capital, often via mergers and acquisitions, and a stable regulatory system that gives startups and small companies a viable exit strategy. Startups and small companies can raise capital freely because they typically have clear pathways to a profitable exit at some future point. Without the prospect of a later acquisition, however, many entrepreneurs would have little incentive to pursue ambitious ventures.

M&A Powers Startups And Small Companies

For startups and small companies, capital enables them to transform ideas into new technologies. By joining forces with larger entities, these firms gain access to financing, infrastructure, and distribution networks – a dynamic that helps bring innovations to market faster and more broadly.

For established firms, M&A allows them to acquire intellectual property, talented employees, goodwill, and other assets to quickly deliver novel products to consumers. Larger firms often have the resources and stability to invest heavily in research and development and to absorb the significant risk that a given endeavor may not pan out, a particular concern when some technologies require billions of dollars in upfront investment. As a result, scale also allows companies to spread risk and costs over a larger number of products and customers. In fast-moving and capital-intensive industries, including those where foreign governments heavily subsidize their rivals, scale provided by M&A is often essential to compete globally and sustain long-term innovation.

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Indeed, for more than a century, M&A has helped to fuel U.S. technological leadership. In 1918, for instance, John Deere acquired the Waterloo Gasoline Engine Company, which had developed the first successful gasoline tractor, after Deere's models flopped in the marketplace. The bet paid off; Deere's distribution network and marketing expertise quickly tripled tractor sales, and over time, its green tractors became global icons. In 1987, Microsoft acquired Forethought, which allowed it to improve and distribute PowerPoint far more broadly. In 2006, Google acquired YouTube, which had been a dating site that offered women $20 to upload videos, injected capital, and upgraded its platform. Five years later, YouTube hit more than three billion daily views. Pharmaceutical mergers, such as that of Roche and Genentech, have led to life-saving treatments for cancers and other diseases.

With low exit barriers and a predictable regulatory climate, the United States enjoys thriving capital markets. In 2021 alone, the United States recorded a peak of nearly 19,000 completed transactions worth close to $350 billion. In 2023, venture capital invested $67.2 billion in AI, much of it from established tech companies that are investing tens of billions of dollars in AI and

M&A Evolves to Meet Innovation Demands

Like technology itself, M&A is evolving to meet the economy's need for speed and flexibility. In a conventional merger or acquisition, a company might purchase all of a smaller firm's equity and assets. Today, newer investment models offer other options. For instance, a company might take a significant minority share in a startup, hire key employees, sign technology licensing deals, or form strategic partnerships. In whatever form, these deals allow a company to quickly access the smaller firm's intellectual property, data, and key employees, while the smaller firm gains access to the larger company's capital and infrastructure, as well as a payoff for founders and early investors.

These investment options offer several advantages. Instead of the months or even years required to perform due diligence and integrate an entire organization, such deals can provide immediate access to capital and intellectual property, a critical benefit in markets such as AI, where technology evolves rapidly. Moreover, these types of investments allow startups and smaller companies to remain independent, if they prefer, while still gaining many of the benefits of an acquisition. In addition, these models allow companies to navigate the challenges of valuing intellectual property in emerging sectors; minority investments or licensing agreements allow companies to secure a foothold in promising ventures as the technology develops.

Ultimately, these arrangements promote competition and innovation by allowing capital, talent, and intellectual property to flow more freely. In one recent deal, for example, Microsoft gained access to OpenAI's innovative AI models and expertise while OpenAI received access to Microsoft's capital and infrastructure, all while OpenAI remained a distinct entity free to work with other companies. Similarly, Meta acquired a minority stake in Scale AI, which specializes in data labeling and AI infrastructure, in a deal that allows Meta to improve its open-source AI models and Scale AI to maintain its independence.

In today's economy, M&A is about more than ownership—it's about investment and opportunity. Newer deal models enable companies to compete, collaborate, and innovate in rapidly evolving markets.

providing startups with the essential resources and infrastructure. Companies with unique technologies are frequently acquired.[1]

M&A Fuels Innovation Across The Economy

These investments, in turn, drive innovation. M&A boosts a firm's innovative capacity by combining complementary research and development efforts. Integrated firms can better coordinate investments, optimally allocate resources, and more easily transfer knowledge among the combined entities.[2] With scale, moreover, a merged company can support greater investment, research and development, and more robust infrastructure.[3]

Study after study has confirmed that M&A raises investment levels and patent filings.[4] One recent study found that mergers can increase innovation across an entire industry by "forcing rivals to invest more in R&D to compete with a more efficient firm or by attracting capital to firms hoping to become acquisition targets." Indeed, an earlier version of the merger guidelines recognized that mergers often "induce competitors to strive for greater efficiencies." Over a multi-year cycle, a given merger correlates with an average increase in industry R&D spending between $299 million and $436 million. On average, therefore, mergers correlate with an increase in R&D of between $9.27 billion and $13.52 billion per year in R&D-intensive industries, as well as an increase of between 1,430 and 3,035 utility patent applications per year.

Particularly in the AI space, established companies have been using employment contracts and licensing deals to boost investment and enable critical knowledge transfers in days, rather than months or year.

These benefits permeate the entire economy. According to a recent, comprehensive literature review, "there is evidence of mergers leading to efficiencies in a wide range of industries, including for both goods and services." Another study found that, of public U.S. companies founded between 1979 and 2013, 43 percent had been backed by venture capital, and these companies accounted for 82 percent of the total R&D of new

[1] Michel Arts et al., *Technology differentiation, product market rivalry, and M&A transactions*, 46 Strat. Mgmt. J. 837 (2025).
[2] Melissa E. Graebner et al., *Success and Failure in Technology Acquisitions: Lessons for Buyers and Sellers*, 24 Acad. Mgmt. Persp. 73 (2010); Jeremy C. Stein, *Internal Capital Markets and the Competition for Corporate Resources*, 52 J. Fin. 111 (1997).
[3] Jeffrey S. Harrison et al., *Synergies and Postacquisition Performance: Differences Versus Similarities in Resource Allocations*, 17 J. Mgmt. 173 (1991).
[4] Bruno Cassiman et al., *The impact of M&A on the R&D process: An empirical analysis of the role of technological- and market relatedness*, 34 Res. Pol'y 195 (2005); Maarten Cloodt et al., *Mergers and acquisitions: Their effect on the innovative performance of companies in high-tech industries*, 35 Res. Pol'y 642 (2006).

public companies.[5] Similarly, a federal commission concluded that mergers increase efficiency, improve capital flows, and allow companies to bring new and better products to consumers.[6]

Mergers may most benefit those industries that require heavy capital and research spending. In the tech sector, one study examined almost 400 acquisitions by the largest technology companies between 2010 and 2020. The study found that the acquisitions boosted venture capital investment in related industries, often by more than 20 percent.[7] In recent years, particularly in the AI space, established companies have been using employment contracts and licensing deals to boost investment and enable critical knowledge transfers in days, rather than months or years.

Similarly, in the biopharmaceutical sector, startups and smaller biotech companies rely on external funding, particularly from venture capital investors, to advance their research. Drug development takes on average 10 to 15 years and costs more than $2 billion to bring a new treatment to patients.[8] The vast majority of drugs in development fail. A large company typically purchases or licenses a drug from a smaller one, with the larger company bringing to the table capital, distribution, and a higher capacity to absorb the risks of late-stage development. According to one study, "recent large pharmaceutical mergers are associated with statistically significant increases in R&D productivity."[9] In the United States, this model produces more new drugs than the rest of the world combined.

Finally, mergers also spur development in traditional industries. Vertical mergers, where a company acquires another firm in a different stage of its supply chain, can accelerate product development and innovation. A study found that mergers raised innovation rates for auto manufacturers that acquired digital-technology companies.[10]

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[5] Luca Berchicci et al., *Environmental capabilities and corporate strategy: Exploring acquisitions among US manufacturing firms*, 33 Strat. Mgmt. J. 1053 (2012).
[6] E.g., Antitrust Modernization Commission Report 57-60 ("AMC Report"), at https://govinfo.library.unt.edu/amc/report_recommendation/amc_final_report.pdf. See also Statement of Ass't Att'y Gen. Christine Varney, *Merger Guidelines Workshops*, Third Annual Georgetown Law Global Antitrust Enforcement Symposium, Sept. 22, 2009 ("Let me start by pointing out that the vast majority of mergers are either procompetitive and enhance consumer welfare or are competitively benign.").
[7] Tiago S. Prado & Johannes M. Bauer, *Big Tech platform acquisitions of start-ups and venture capital funding for innovation*, 59 Info. Econ. & Polc'y 100973 (2022).
[8] DiMasi, Joseph A., Henry G. Grabowski, and Ronald W. Hansen. "Innovation in the pharmaceutical industry: new estimates of R&D costs." Journal of Health Economics 47 (2016): 20-33.
[9] Michael S. Ringel and Michael K. Choy, Do large mergers increase or decrease the productivity of pharmaceutical R&D?, 22 DRUG DISCOV. TODAY 1749-1753 (2017), https://pubmed.ncbi.nlm.nih.gov/28646641/.
[10] Andre Hanelt, *Digital M&A, digital innovation, and firm performance: An empirical investigation*. 33 Euro. J. Info. Sys. 3 (2021).

Robust M&A Requires A Stable Regulatory And Enforcement Climate

America's innovation ecosystem, from startup to acquisition to new products, requires a stable and objective merger control regime. For most of the past forty years, the United States has enjoyed a predictable and transparent antitrust framework that allows larger companies to invest in innovative startups, compete in new product markets, and grow organically without artificial regulatory restrictions. Unlike other parts of the world, the United States does not handcuff or "shoot the winner" of the competitive marketplace. Instead, the United States reviews mergers for their possible impact on consumers and the competitive process, rather than for their impact on particular competitors or out of concerns that some successful companies might grow too big or enter too many product lines.

By encouraging the free flow of capital, this predictable regulatory regime helps to explain why the United States remains the world's foremost innovator. As China's state industrial model continues to challenge the U.S. for global predominance, policymakers must ensure that they allow the American model to thrive.

Pillar Two: The Global Contrast: Lessons from Europe's Approach to Mergers

Europe's contrasting approach to competition policy offers a cautionary tale – and now an opportunity. Over the past several decades, the EU, its member states, and the UK have viewed mergers far more skeptically than the United States. Their stringent approach has reduced venture capital activity, stifled innovation, and hamstrung growth-minded European companies, while also delaying and blocking several pro-competitive mergers of American companies. Recently, however, many European policymakers and business leaders have acknowledged the pro-competitive benefits of mergers and the need for reform. Europe's experience should remind U.S. policymakers about the virtues of the American innovation ecosystem and the benefits of robust M&A.

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For Decades, Europe Has Disfavored Mergers

In general, Europe's current merger control framework imposes unnecessary procedural and substantive hurdles that obstruct mergers with clear competitive benefits. Procedurally, the EU and its member states maintain numerous provisions that enable merger scrutiny at virtually any level of governance and for any deal, regardless of its size or nexus to the region. This expansive and ambiguous approach deters, delays, and sometimes entirely blocks beneficial deals. Substantively, the EU tends to embrace speculative antimerger theories and to place excessive weight on market concentration. This approach often overlooks dynamic efficiencies, innovation, and the strategic advantages of scale in a global market.

Europe's merger skepticism has hobbled several American deals, to the detriment of consumers, U.S. economic interests, and American national security. Both European and British regulators have delayed and blocked primarily American mergers that had little or no economic connection to the region. For example, the EU objected to Amazon's purchase of iRobot based on the speculative theory that Amazon, as an online marketplace, might one day restrict competitors' access to its website. After Amazon abandoned the deal, iRobot laid off more than half its workforce, and Chinese firms gained a market edge.

Similar examples abound. The EU investigated Illumina's purchase of Grail, a vertical health care merger involving two American companies, based on aggressive theories of foreclosure and self-preferencing. Across the channel, the UK ordered Meta to unwind its purchase of GIPHY, a much smaller company that had no meaningful nexus with the UK, based on the remote prospect that GIPHY might someday compete with Meta in the market for digital advertising. In opposing these and other deals, European regulators ignored the proven benefits of mergers to competition and innovation.

Europe's Merger Hostility Has Harmed its Economy

In part due to its merger policies, Europe's economy has fallen behind the other developed parts of the world, including the United States and China, in terms of growth, investment, and innovation.[11] For example, from 2017 to 2019, there were roughly twice as many venture capitalists in the United States as there were in Europe.[12] During these years, total venture capital in the United States grew to $132 billion, while Europe continued to stagnate with just $36 billion.

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Many Europeans are starting to recognize the need for reform. In Mario Draghi's report on the future of European competitiveness (the "Draghi Report"), policymakers assert that the lack of venture capital funding and angel investment explains the innovation gap between the United States and Europe. As the Report notes, the "innovative companies that want to scale up in Europe are hindered at every stage by inconsistent and restrictive regulations."[13] The Report continues, "we claim to favor innovation, but we continue to add regulatory burdens on to European Companies, which are especially costly for SMEs [small and medium-sized enterprises] and self-defeating for those in the digital sectors."[14]

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[11] *Europe is no longer an innovation leader* (2019), at https://www.weforum.org/agenda/2019/03/europe-is-no-longer-an-innovation-leader-heres-how-it-can-get-ahead/.

[12] See Reform or Regress? An Assessment of Proposed Antitrust Legislation, at https://americanedgeproject.org/wp-content/uploads/2022/07/Reform-or-Regress-An-Assessment-of-Proposed-Antitrust-Legislation-July-2022_FINAL.pdf.

[13] Draghi Report at 244; *see also* Gordon M. Phillips & Alexei Zhdanov, Venture Capital Investment, Mergers, and Competition Laws around the World (Nat'l Bureau of Econ. Rsch., Working Paper No. 24082, 2017) (study showing decreased venture capital funding in countries with stricter M&A competition laws).

[14] Mario Draghi, "The Future of European Competitiveness," Sept. 2024, at 8, https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20_%20A%20competitiveness%20strategy%20for%20Europe.pdf.

To address these concerns, the Draghi Report expressly calls for a fresh approach to mergers. The Report advises that the EU's merger guidelines should increase the "weight of innovation"[15] and that "updated guidelines should explain what evidence merging parties can present to prove that their merger increases the ability and incentive to innovate, allowing for an 'innovation defence.'"[16]

Other Europeans have echoed concerns about the Europe Union's merger control regime. Europe's startup community has warned that the emphasis on so-called "killer acquisitions" reflects an "outdated, industrial-era understanding of how markets and competition work, particularly in the digital sphere."[17] One statesman opined that Europe must prioritize innovation or suffer a "slow agony" of decline in global competitiveness. Indeed, top European firms are relocating to the United States to escape regulatory constraints and access a more favorable innovation environment.

Lessons For American Policymakers

In Washington, D.C. and states around the country, policymakers should recognize the dangers of importing European competition policy concepts into the United States. If adopted here at home, the European model would risk stagnation and shatter the very ecosystem that has propelled America's global tech leadership. In most respects, Europe lags far behind China in terms of its capacity to innovate – the United States cannot afford the same mistakes.

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Indeed, rather than the United States moving towards Europe, U.S. policymakers should note that Europeans are working to move their competition policies in our direction. The Draghi Report recommends numerous pro-innovation policies that would move Europe towards America's light-touch regulatory regime. In particular, the Report

[15] Mario Draghi, "The Future of European Competitiveness," Sept. 2024, at 6, 35, https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20_%20A%20competitiveness%20strategy%20for%20Europe.pdf.
[16] Draghi Report at 299.
[17] Allied for Startups, "Half-Measures Never Built a Champion," 15 July 2025, https://alliedforstartups.org/wp-content/uploads/Joint-Statement_-Half-Measures-Never-Built-a-Champion-1.pdf.

recommends that Europe loosen merger rules, lower energy costs, close the skills gap, and "remov[e] barriers that prevent innovative companies from growing and attracting finance." Policymakers appear to be taking heed. In a new consultation, the European Commission is gathering public input for a "fresh approach" to Europe's merger control regime.

Pillar Three: The Homefront: A Golden Opportunity for a Strategic Reset

Following the lead of reformist Europeans, U.S. policymakers should realign domestic merger policy to prioritize innovation. Although the United States has avoided Europe's worst mistakes and largely maintained a pro-competitive merger regime, many elements of former President Joe Biden's antimerger agenda remain in place. President Trump's election and commitment to innovation, as exemplified in his AI Action Plan, present a golden opportunity for a strategic reset.

Many Biden-era Orders, Regulations, And Policy Statements Remain In Effect

The Biden Administration treated mergers and much of the private sector with hostility. Led by adherents of the Neo-Brandeisian movement, the antitrust agencies complained about bigness, sought to use antitrust law to support smaller competitors, and downplayed economics and evidence of consumer harm. Instead of the consumer welfare standard, Neo-Brandeisians focused on "market realities," an undefined concept that afforded them substantial discretion to pick winners and losers.

Much like their European counterparts, these policymakers viewed the economy through a static, structural lens. They equated "competition" with "the number of competitors," doubted that large companies would or could innovate, and largely ignored the existence of foreign competitors, especially from China. They also largely ignored the mountains of empirical evidence about the benefits of mergers, the plain evidence of Europe's relative economic decline as compared to the United States, and the record levels of investment in AI and other technology markets from companies both big and small. In any event, based on these beliefs, the agencies raised the cost of merger filings, embraced quixotic anti-acquisition legal theories, and even colluded with foreign competition agencies to block mergers of U.S. companies.

Although President Trump has rolled back many Biden-era initiatives, much of the Biden Administration's antimerger agenda has not been dismantled as of yet. As part of a strategic reset to unleash American innovation, the Trump Administration should reexamine these initiatives that undermine the United States' innovation capabilities:

- The revised merger filing form remains in place, even though it demands reams of unnecessary data to evaluate a proposed merger. The FTC itself estimated that the form could more than quadruple the requisite time and expense of the filing process. Most deals require only a cursory review; former FTC Chair Lina Khan explained that in "any given year, the antitrust agencies get anywhere between 1,500 and 3,000 merger filings. Of that number, 98% go through without even second questions being asked by the agencies."[18]

- Similarly, the antitrust agencies have declined to revisit the new merger guidelines, which seek to rewrite decades of antitrust policy by declaring structural presumptions against mergers that increase market concentration and by downplaying the possibility of merger efficiencies. These guidelines give the agencies tremendous discretion to dictate market structures and play to favored constituencies.

- Section 5 of the FTC Act prohibits "unfair methods of competition." In a policy statement interpreting that section, President Biden's FTC declared that it may deem many types of routine business conduct as "unfair" without any showing of harm to consumers or anticompetitive intent. In particular, the FTC announced that it may be illegal for companies to harm competitors, rely on economies of scale, or consummate mergers that have the "tendency to ripen into violations of the antitrust laws." If enforced and upheld, this statement would expand the FTC's discretion to block pro-competitive mergers.

By revisiting these and other Biden-era initiatives, the Trump Administration would reduce regulatory costs, increase legal certainty, and further signal to the private sector and investors that America's innovation ecosystem is open for business.

The Trump Administration Should Return To An Era Of Measured Enforcement

In addition to these orders, regulations, and policy statements, much of former President Biden's antimerger enforcement agenda also remains in place. During his tenure, the antitrust agencies effectively declared war on mergers, and of greatest concern, vertical mergers that would have improved U.S. competitiveness. The agencies challenged the proposed mergers of Nvidia-Arm, Lockheed-Aerojet, Meta-Within, and Illumina-Grail, vertical mergers in important markets such as chip design, rocket motors, the metaverse, and cancer treatments, based on speculative theories of foreclosure and potential competition.

[18] Lina M. Kahn, "Remarks of FTC Chair Lina M. Khan, Economic Club of New York," Interview by Peter Orszag (July 24, 2023), available at https://www.youtube.com/watch?v=X7u3JwSfHZY.

Against this backdrop, the Trump Administration has a historic opportunity to realign the antitrust agencies with its goal of unleashing the American economy, especially in AI, while also protecting the American public.

While the agencies have dropped several merger challenges and accepted reasonable remedies, such as partial divestitures, to resolve other challenges, current agency leaders have sounded Neo-Brandeisians themes regarding corporate power and scale.

Moreover, the agencies continue to seek to break apart many of the nation's largest technology companies based on speculative theories, and to pursue "structural relief" against Amazon, as well as open-ended relief that could reshape Apple's business model.

The Trump Administration has a historic opportunity to realign the antitrust agencies with its goal of unleashing the American economy, especially in AI, while also protecting the American public.

At a time when the United States and China are locked in a tight race for global leadership, the White House should return the antitrust agencies to an era of measured enforcement. Although some Neo-Brandeisians may decry measured enforcement as a call to insulate so-called "national champions" from scrutiny, in reality, measured enforcement simply means enforcement grounded in statute, precedent, and evidence of actual harm to consumers.

For example, antitrust agencies should continue to examine any significant merger, and if the evidence shows that a proposed merger would harm consumers, the agencies should intervene, either to block the transaction or to try to modify it in such a way as to address the competitive threat. If a company is found to have violated the antitrust laws, the agencies should pursue a tailored remedy that remediates the violation. Vigorous, measured antitrust enforcement, grounded in the consumer welfare standard, is essential for protecting consumers and competition.

At the same time, the agencies should not attempt to restructure the economy based on speculative theories of harm or hostility to scaled companies. Such an approach reflects Neo-Brandeisian and European thinking about the wisdom and ability of government bureaucrats to reorganize markets according to their preferences. For instance, although some Neo-Brandeisians blithely assert that corporate breakups would increase innovation, the European theory that more competitors mean more competition is flawed, as such an approach ignores the fact that large companies have far more capacity to invest and to absorb the risk that certain investments may not pan out.

Moreover, measured enforcement is consistent with President Trump's AI Action Plan and emphasis on innovation. In the AI Action Plan, the President directs the FTC to review all "investigations commenced under the previous administration to ensure that they do not advance theories of liability that unduly burden AI innovation." The Action Plan also encourages the FTC to review all "final orders, consent decrees, and injunctions, and, where appropriate, seek to modify or set-aside any that unduly burden AI innovation." Consistent with these principles, measured antitrust enforcement should not unduly burden any innovation. Indeed, the FTC's Chairman, Andrew Ferguson, himself stated that the FTC should "get the hell out of the way" of mergers that raise no competitive concerns.

Finally, measured enforcement also comports with President Trump's public statements about the value of scale and the importance of American technological leadership. For instance, when asked during the campaign whether Google should be broken up, he responded, "If you do that, are you going to destroy the company? What you can do without breaking it up is make sure it's more fair." President Trump recognizes that the United States needs great companies to maintain America's global technological leadership. In an interview, he said, "I give [Google] a lot of credit, they've become such a power … we don't want China to have these companies."

By respecting precedent and the value of scale, U.S. antitrust agencies can vigorously enforce the law while promoting the President's vision and protecting America's innovation ecosystem.

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RECOMMENDATIONS

For these reasons, U.S. policymakers should take the following steps.

Restore Innovation As A Core Priority In Merger Policy

The White House should revoke and revise President Biden's Executive Order on competition, which encourages new regulations, while the antitrust agencies should revise the merger guidelines, filing forms, and Section 5 policy statement to expedite review of pro-competitive mergers, return to measured enforcement grounded in evidence and precedent, and expressly evaluate how proposed mergers may strengthen U.S. innovation.

Incorporate National Security Considerations Into Merger Review

The intelligence and national security agencies should assess mergers that could affect the global security landscape, particularly in light of China's ambitions, and notify the antitrust agencies if they believe a particular merger would help or hinder the U.S. economy's capacity to innovate and strengthen or weaken our national security.

Encourage Europe To Embrace The Pro-Competitive Benefits Of Mergers

The United States should learn from Europe's past mistakes, reject efforts to import European competition concepts here at home, and encourage Europe to adopt a fresh approach to merger review, one that recognizes that mergers can promote investment, innovation, growth, and competitiveness. This would create opportunities for both U.S. and European companies to innovate and to scale, strengthening the West's ability to compete with China.

Build On The President's AI Action Plan

In its AI Action Plan, the White House wisely instructed the FTC to ensure that its enforcement and regulatory activities "do not advance theories of liability that unduly burden AI innovation." The White House should extend this directive to the DOJ and to all forms of innovation, from biotech to quantum computing. A return to measured antitrust enforcement, grounded in precedent and evidence of consumer harm, would help to cabin the antitrust agencies' Neo-Brandeisian impulses.

Mergers and acquisitions enable U.S. companies to rapidly scale innovation, acquire cutting-edge capabilities, and consolidate resources to compete globally. As China aggressively invests in strategic technologies, namely AI, semiconductors, and quantum computing, U.S. firms need the flexibility to their combine strengths, streamline R&D, and accelerate time-to-market. To maintain its technological edge over China and to counter China's aggressive use of state industrial policy, the United States must continue to foster a dynamic environment for mergers and acquisitions.

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